

People v Williams

2010 NY Slip Op 31940(U)

July 23, 2010

Supreme Court, Oneida County

Docket Number: 48316

Judge: Daniel C. Wilson

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State of New York
County of Oneida

Rome City Court

People of the State of New York

vs.

MEMORANDUM DECISION

Willie E. Williams,
Defendant.

DOCKET NO.
48316

no appearance by District Attorney of Oneida County,
for the People

David L. Arthur, Esq., Assistant Public Defender of Oneida County, Attorney
for the Defendant

PRESENT: Hon. Daniel C. Wilson, City Court Judge:

The defendant has moved this court by a motion which was filed with the court on May 12, 2010 and which was duly submitted to the court for decision on May 26, 2010 for an order seeking discovery and inspection of certain listed items, and for relief pursuant to *People vs. Sandoval*, 34 NY 2d 371 (1974) and *People v. Ventimiglia*, 52 N.Y. 2nd 350 (1981) as to the use for cross examination purposes or upon the direct case of the People of any prior criminal convictions and/or bad acts of the defendant at a trial of this action, and for disclosure of exculpatory material pursuant to federal and state case law, and for suppression of oral and written statements of the defendant upon the basis that they were obtained in violation of the

defendant's rights under the New York and United States Constitutions, and for suppression of an identification of the defendant upon the basis that it was obtained in violation of the defendant's rights under the New York and United States Constitutions, and for an order seeking dismissal of the accusatory instrument herein for being defective upon its face, and for leave to submit any further motions necessitated by the relief obtained from this motion. The People have not opposed said motion either orally or in writing and after due deliberation, the court determines the defendant's motion as follows:

The defendant's motion for relief pursuant to *People vs. Sandoval*, supra, and *People v. Ventimiglia*, supra, will be granted insofar as the People will be directed to serve upon the defendant and file with the court a list of all prior criminal convictions and/or bad acts of the defendant which they intend to use for cross examination purposes or upon their direct case at a trial of this action. Such list shall be served and filed by a date to be fixed by the court within three days of trial. At such time, the court will determine which, if any, of said list may be used for such purposes at the trial of this action. Pending said in camera ruling, said motion would be in all other respects denied.

The defendant's motion for police reports and arrest reports as listed in part 3 of defendant's moving papers and for prior statements of witnesses as listed in part 5 of defendant's moving papers would be granted as to any exculpatory material, but any other pre-trial discovery would be denied. The People will be reminded to comply with the procedure outlined in the Criminal Procedure Law for disclosure of such materials at the time of trial.

The defendant's motion for a list of persons interviewed by law enforcement personnel as listed in part 4 of defendant's moving papers would be granted as to any exculpatory material, but in all other respects will be denied. Part 6 of defendant's moving papers requesting a list of witnesses would be in all respects granted.

Parts 7 and 8 of defendant's moving papers requesting disclosure of exculpatory material will be in all respects granted.

The defendant's motion to suppress the alleged oral and written statements of the defendant will be granted insofar as a hearing will be scheduled to determine said issues on September 8, 2010 at 11:00 A.M., but pending the results of said hearing said motion would be in all other respects denied.

The defendant's motion to suppress the identification of the defendant will be granted insofar as a hearing will be scheduled to determine said issues at the same time as the hearing above, but pending the results of said hearing said motion would be in all other respects denied.

As to the motion to dismiss the accusatory instrument for being defective upon its face, the accusatory instrument to be valid upon its face within the provisions of CPL 100.40 would in addition to the requirements of the reasonable cause to believe that the defendant committed the offense charged in the accusatory instrument, also have to establish by, "nonhearsay allegations of the factual part of the information and/or of any supporting depositions" every element of the offense charged and the defendant's commission thereof.

An “information” (charging a misdemeanor or petty offense) must demonstrate “reasonable cause” and be legally sufficient for a prima facie case, a much more demanding standard than what is required for a felony complaint. *People vs. Alejandro*, 70 N.Y.2d 133 (1987).

The procedural requirements for the factual portion of a local criminal court information are, simply: that it state "facts of an evidentiary character supporting or tending to support the charges" (CPL 100.15 [3]; *see*, CPL 100.40 [1] [a]); that the "allegations of the factual part ... together with those of any supporting depositions ... provide reasonable cause to believe that the defendant committed the offense charged" (CPL 100.40 [1] [b]); and that the "non-hearsay allegations [of the information and supporting depositions] establish, if true, every element of the offense charged and the defendant's commission thereof" (CPL 100.40 [1] [c]; *see*, CPL 100.15 [3]).

So long as the factual allegations of an information give an accused notice sufficient to prepare a defense and are adequately detailed to prevent a defendant from being tried twice for the same offense, they should be given a fair and not overly restrictive or technical reading (*see*, *People v. Casey*, 95 N.Y. 2nd 354, 360; *People v Jacoby*, 304 NY 33, 38-40; *People v Knapp*, 152 Misc 368, 370, *affd* 242 App Div 811; *People v Shea*, 68 Misc 2d 271, 272; *see also*, *People v Allen*, 92 NY2d 378, 385; *People v Miles*, 64 NY2d 731, 732-733).

The *Alejandro* case actually involved a failure to satisfy the first requirement of CPL

100.40 (1) (c), in that there was a total absence of pleading of one of the elements of the crime of Resisting Arrest, i.e., that the defendant had resisted an "authorized" arrest (Penal Law §§ 205.30 [emphasis supplied]; *People v Alejandro, supra*, at 135-136). As noted in *People v. Casey, supra*, a defect would be a jurisdictional non-waivable defect, as opposed to the issue as to whether the supporting deposition contains the proper non-hearsay testimony to support the charge. A defect in the supporting deposition, on the other hand, would not have been jurisdictional. *People v. Casey, supra*.

There is no non-hearsay evidence within any supporting deposition to support an allegation that the defendant committed these acts. However, the accusatory does state that the information is also based upon the personal knowledge of Officer Fanfarillo, which the court must then assume that the officer possesses personal knowledge as to the identity of the defendant without the aid of hearsay.

We pass now to the question of the situation where an information sufficient on its face is not labeled as *made upon information and belief* but it develops on the trial that the informant did not have personal knowledge of all the material allegations even though the People are able to prove the case beyond a reasonable doubt by other evidence. In such instances the defendant is entitled to a dismissal (cf. *People v. James*, 4 NY 2nd 482 (1958); *People v. Bohoy*, 61 Misc. 2nd 1096, 1099, Court of Special Sessions of Village of Watkins Glen, 1970; 1.

People v. Gambella, 56 Misc 2d 928; *People v. Bresee*, 37 Misc 2d 516), and this is true even where attempts are made to file subsequent depositions or other affidavits in furtherance of the

information prior to or at trial. (People v. Haverty, 21 Misc 2d 198; People v. Treman, 28 Misc 2d 379; People v. James, supra; People v. Bresee, 37 Misc 2d 516)

The defendant's objection as to sufficiency of the information is noted and the defendant may renew his motion upon trial if the evidence shows such lack of knowledge on the part of the informant. (Cf. People v. Strassner, 299 N. Y. 325.)

Accordingly, the defendant's motion to dismiss would be denied with leave to renew.

Accordingly, the defendant's motion to dismiss would be denied with leave to renew.

The defendant's motion to reserve the right to submit any further motions necessitated by the relief obtained from this motion would be granted pursuant to the provisions of section 255.20 (3) of the Criminal Procedure Law, but in all other respects will be denied.

The defendant's motion is granted as above stated, but in all other respects will be denied.

This will constitute the Decision and the Order of the Court.

ENTER:

DANIEL C. WILSON

ROME CITY COURT JUDGE

DATED: July 23, 2010